

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }  
FOX-NORMANDIE, LTD. }

Appearances:

For Appellant: Leonard Jacobson, Certified Public  
Accountant; Alfred L. Fox, President of  
Appellant  
For Respondent: Chas. J. McColgan, Franchise Tax Commis-  
sioner; Frank M. Keesling, Franchise Tax  
Counsel; Clyde Bondeson, Senior Franchise  
Tax Auditor

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Fox-Normandie Ltd., a corporation, to his proposed assessment of an additional tax in the amount of \$246.67 for the fiscal year ended November 30, 1937, based upon the income of the corporation for the fiscal year ended November 30, 1936.

The Appellant claimed a deduction in its return of income for the fiscal year ended November 30, 1936, in the amount of \$6,805.07 as salary paid to David Fox for services rendered to it during that fiscal year. The Commissioner disallowed the deduction in its entirety, the validity of his action in so doing being the sole question presented for consideration herein.

Appellant, a closely held corporation, owned and operated two apartment houses during the fiscal year ended November 30, 1936. David Fox, the father of Alfred Fox who is the principal stockholder of Appellant, was employed as manager of the apartment houses, his duties consisting of the general supervision of the affairs thereof and involving particularly the determining of the rentals to be charged to occupants, the ascertaining of necessary repairs and replacements of furnishings and the making of arrangements for the repairs and the purchasing of the furnishings. Although David Fox was originally employed by Appellant in December, 1933, in an advisory capacity, it is contended on its behalf that during the year ended November 30, 1936, he devoted almost his entire time to its operations. Appellant employed, in addition to David Fox, a resident manager for each apartment house who is paid a specified salary and furnished living quarters.

During the year in question the Appellant received gross revenue from rentals in the amount of \$41,305.52. Its expendi-

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tures for repairs to the apartment houses amounted to \$5,796 and approximately \$12,000 was expended for furnishings. Certain sums were paid to David Fox as salary from time to time during the year, the total amount of his salary not being determined, however, until about the end of the year. While his salary was fixed at \$6,805.07, only \$4,550 of that amount was paid to him in cash, a note being given to him for the remaining \$2,255.07.

The Appellant is entitled under Section 8(a) of the Bank and Corporation Franchise Tax Act to a deduction from its gross income of an amount representing a reasonable allowance for salary for personal services actually rendered by David Fox. Inasmuch as certain services were rendered by him during the year in question, the Commissioner acted improperly in disallowing in its entirety the deduction of \$6,805.07 claimed by Appellant. We believe, however, that the amount of salary allowance claimed by Appellant in its return of income is excessive. Considering the nature and size of Appellant's operations and the services performed by David Fox as herein set forth, together with the prevailing rate of compensation of other individuals for similar services, we have concluded that \$1,800 represents a reasonable allowance as salary for the services rendered by him to the Appellant. The action of the Commissioner should, accordingly, be modified to the end that Appellant be allowed a deduction from its gross income in the amount of \$1,800 for salary paid to David Fox for his services for the year ended November 30, 1936.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Fox-Normandie, Ltd., a corporation, to his proposed assessment of an additional tax in the amount of \$246.67 for the fiscal year ended November 30, 1937, based upon the income of said corporation for the year ended November 30, 1936, is hereby modified. Said action is reversed in so far as the Commissioner denied to said corporation a deduction in the amount of \$1,800 as salary paid to David Fox; said action is sustained insofar as the Commissioner denied to said corporation a deduction in excess of said amount as salary paid to David Fox. The correct amount of tax to be assessed to Fox-Normandie, Ltd., is hereby determined as the amount produced by means of a computation which will include the allowance as a deduction from gross income of the said amount of \$1,800 in the calculation thereof. The Commissioner is hereby directed to proceed in conformity with this order and to Fox-Normandie, Ltd., a notice of assessment revised in accordance therewith.

Done at Sacramento, California, this tenth day of March, 1938, by the State Board of Equalization.-

R. E. Collins, Chairman  
Jno. C. Corbett, Member  
Fred E. Stewart, Member

ATTEST: Dixwell L. Pierce, Secretary